IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3333 of 1998
to
FIRST APPEAL No 3344 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

EXECUTIVE ENGINEER

Versus

CHANDRASINH NARSINH,HEIRS OF DECD.CHANDRASINH NARSINH

Appearance:
MR SAURABH AMIN for MR GHANSHYAM AMIN for appellants
MR KM SHETH for Respondent claimants in all these appeals.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/04/99

COMMON ORAL JUDGEMENT (per M.R. Calla, J.)

In these First Appeals, 12 in number, the appellant, i.e. The Executive Engineer, Narmada Yojna

Main Canal, Division-5, Vadodara, has challenged the orders passed on 6th May 1997 by the 2nd Extra Assistant Judge, Panchmahals at Godhra, in Land Acquisition Reference Cases Nos.61 to 64 of 1995, 189 to 196 of 1989, the main case being 62 of 1995.

2. There is no dispute that in the present cases, the award was passed by the Land Acquisition Officer on 27th March 1989 in Land Acquisition Case No. 28 of 1986. The notice under Section 12(2) of the Land Acquisition Act was issued on 29th March 1989 and the same was served on the same day, i.e. 29th March 1989 on the claimants. Therefore, if at all the references under Section 18 were to be sought for by any of the claimants, the application seeking reference under Section 18 ought to have been made within a period of six weeks from 29th March 1989. The said period of six weeks expired in May 1989, may be on 10th May 1989. However, there is no dispute that what to talk of moving applications under Section 18 within the prescribed period of six weeks under the proviso (b) to Section 18, the claimants had not even applied for obtaining certified copy within time, the same was applied for only in July 1990 and in some cases in August 1990 and on 24th July 1990,the applications were made for seeking reference under Section 18. When the reference came up before the reference Court, on behalf of the Department, an objection was raised that the applications seeking references were time barred because the same had not been preferred within the prescribed time under proviso (b) to Section 18(2). However, the reference Court took the view that, while considering the question of delay, the Court has to consider and interpret the law of Limitation liberally and it is to be kept in mind that for such technicality, the substantial right of the parties should not be allowed to suffer, unless there is malafide or that party wanted to take undue advantage. The main argument on behalf of the claimants was that they were not aware of the provisions of law of Limitation and were misguided by the social workers as well as lawyers and therefore, they could not file the references before the Court and on these grounds, the condonation of delay was sought. The reference Court held that there was no malafide on the part of the claimants, but the bonafide mistake caused the delay. While making reference to a decision of this Court in the case of Bhikhabhai v. State, reported in 1988 (1) GLR 688 it was noted that Section 5 of the Limitation Act is applicable and the reference Court allowed the application seeking condonation of delay as per its order dated 18th December 1995 to which the reference Court has also made a reference in the body of the impugned order

dated 6th May 1996, para 4 thereof.

3. The learned Counsel for the appellant has submitted that the references were absolutely time barred in the facts of the present case and the reference Court had no jurisdiction to entertain these references or even to condone the delay. We had considered the particular question of limitation with reference to the notice under Section 12(2) and the proviso (b) under Section 18(2) of the Land Acquisition Act in case of Special Civil Application No. 1588 of 1999 and allied matters decided on 20th April 1999 itself in detail. So far as the facts of the present case are concerned, admittedly, the references were sought after the prescribed period and therefore, it cannot be said that it was a case of valid reference. In absence of competent and valid reference, the reference Court, which has been created to hear such references under the special enactment, namely, Land Acquisition Act, itself could not proceed to treat the reference as valid so as to decide the same on merits and on the ground that it was not a valid reference as it was made beyond the prescribed time, the reference Court could have declined to entertain the same. However, it appears that the reference Court entertained the references in the present cases on the authority of the Division Bench decision of this Court in the case of Bhikhabhai (supra). It may be pointed out that in the aforesaid case of Bhikhabhai (supra), the Division Bench was concerned with a case in which the concerned Collector had declined to make the reference as the applications had been moved after the prescribed time. The contents in para 2 of this judgment in the case of Bhikhabhai (supra) show that after the award was passed, the claimants wanted the matters to be referred under Section 18 of the Land Acquisition Act, to the District Court. The Collector had rejected the applications on the ground that the application for reference under Section 18 was time barred and that he had no power to condone the delay in preferring the application in order to refer the matter to the District Court under Section 18 of the Act. It was a case of delay for a period of four months in each of the matters and it was stated that the Advocate of the claimant along with his family members were all sick and that is why the application for reference could not be made within the period prescribed under Section 18 of the Act and even though the reasons stated are sufficient and acceptable, the concerned Land Acquisition Officer did not exercise his jurisdiction on the premise that he had no jurisdiction to condone the delay. In para 4 of the judgment in the case of Bhikhabhai (supra), the Division Bench has made reference

to an earlier decision rendered by this Court in the case of Mohan Vasta v. State of Gujarat, reported in 1985 GLH 199 : 1985 (1) GLR 293. This case of Mohan Vasta (supra) was also decided by a Division Bench of this Court and in the this case of Mohan Vasta (supra), the Division Bench held that, Section 29(2) was wide enough to include a proceeding before any Court or Tribunal and hence Section 4 to Section 24 of the Limitation Act apply to a proceeding under the Land Acquisition Act before the Collector and the Collector is bound in proper cases to condone the delay. In the case of Mohan Vasta (supra), before the Division Bench of this Court, the application for reference had not been filed within 45 days and it was held that the Collector had the power to condone the delay under Section 29(2) read with Section 5 of the Limitation Act. In both these cases, the directions were issued to the concerned Land Acquisition Officer to consider the question of condonation of delay in accordance with the provisions of the Limitation Act and then to make reference to the reference Court. In either of these two cases, the question with regard to the condonation of delay by the reference Court itself was not at all considered. What was considered by the Division Bench in these cases was as to whether the Collector (Land Acquisition Officer) had the power to condone the delay or not. In the case at hand, it is reference Court which itself has considered the question of delay and has condoned the delay in the time barred references. It would have been a different matter altogether had the condonation of delay been sought before the Land Acquisition Officer or the Collector when the applications under Section 18 were moved and the Collector would have passed appropriate orders on the question as to whether the delay was required to be condoned or not. Therefore, in the aforesaid two cases the Division Bench of this Court found that the Land Acquisition Officer had refused to consider the question of condonation of delay whereas in view of the provisions of Limitation Act, he could have considered as to whether there was a case for condonation of delay or not and accordingly in both these cases, the Division Bench had directed the concerned Land Acquisition Officer to make reference to the District Court. Therefore, we find that the aforesaid two cases decided by our High Court are of no help to the claimants in the present cases as in the present cases, the question of delay has been decided and the delay has been condoned by the reference Court and hence both these cases are distinguishable. Reference Court is not a Court of appeal against the award/order passed by the Land Acquisition Officer. He gets the jurisdiction to touch the references only when there is

valid reference sought within time and in cases where application seeking reference is made beyond time - the delay is already condoned by the concerned Land Acquisition Officer himself.

4. The learned Counsel for the appellants has cited before us a decision of the Supreme Court in the case of Mohammed Hasnuddin v. State of Maharashtra, reported in AIR 1979 SC 404, wherein the Supreme Court has considered that a Court functioning under the Act being a Tribunal of special jurisdiction, was the duty to see that the reference made to it by the Collector under Sec.18 complies with the conditions laid down therein so as to give jurisdiction to the Court to hear the reference. On the basis of this reasoning, the Supreme Court also overruled the decision rendered by a Full Bench of Allahabad High Court in the case of Abdul Karim (AIR 1963 All. 556). The Full Bench of Allahabad High Court had taken a view that in case of a reference by the Collector on an application barred by time under Section 18(2), the District Judge could not go into the question of its validity or refuse to hear it. The Full Bench of the Allahabad High Court had held that it is for the Collector to decide whether any application is barred by time and whether to make any reference; the District Judge to whom the reference would lie or is made, does not exercise appellate jurisdiction over him and has not been given any jurisdiction to set aside his finding in respect of the application being made within time and his right to make a reference on its basis. It was held that the Collector acts administratively while making a reference; there was no provision connecting the District Judge's jurisdiction to hear a reference with an application for reference made by an owner of the land and it cannot be contended that a District Judge has jurisdiction only if the owner's application was made within the prescribed time. If he finds that what he received was a reference purporting to have been made under the Land Acquisition Act he will assume jurisdiction and he will find that the reference was made under the Land Acquisition Act, even though it was made on a time barred application. This view has been overruled by the Supreme Court. At this stage, while applying the decision of the Supreme Court in the case of Mohammed Hasnuddin (supra), we may observe that this decision reported in AIR 1979 SC 404 was neither cited nor considered by the Division Bench of this Court in the case of Bhikhabhai (supra) or before the Division Bench while deciding the case of Mohan Vasta (supra). The Supreme Court in the aforesaid case has held in no uncertain terms that if an application is made before the

Collector, which is not within time, the Collector will have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within the time and satisfy the conditions laid down in Section 18. Even if a reference is wrongly made by the Collector, the Court will still have have to determine the validity of the reference because the very jurisdiction of the Court to hear a reference depends on a proper reference being made under Sec.18 and if the reference is not proper, there is no jurisdiction in the Court to hear the reference. The Supreme Court has held that it follows that it is the duty of the Court to see that the statutory conditions laid down in Sec.18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the Court and, therefore, the Court has to ask itself the question whether it is has jurisdiction to entertain the reference. Further guidelines have been given by the Supreme Court in para 29 of this judgment that in deciding the question of jurisdiction in a case or reference under Sec.18 by the Collector to the Court, the Court is certainly not acting as a Court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. On the basis of the reasoning as aforesaid, the decision rendered by the Full Bench of the Allahabad High Court, reported in AIR 1963 All.556 was overruled by the Supreme Court. We, therefore, find that in the present cases, the references as had been made by the Collector to the reference Court was itself not valid references as the same had been moved on the basis of application moved after the prescribed time, the concerned Land Acquisition Officer before whom the applications seeking reference were made had neither been called upon to decide the question of condonation of delay nor had he passed any order with regard to the condonation of delay. The references were made to the District Court without passing any order with regard to condonation of delay and these applications as were made in July/August 1990 were clearly time barred as the award had been passed on 27th March 1989, notice dated 29th March 1989 issued under Sec.12(2) had been served upon the claimants on 29th March 1989 itself and thus, the reference Court could not have condoned the delay as if the reference applications straightway lie before it. The reference applications were sent to the reference

Court by the Collector on the basis of the time barred applications which were time barred on the day when they were moved before the Land Acquisition Officer himself for seeking the reference under Sec.18. Applying the principle laid down by the Supreme Court in all these matters, the reference itself was become invalid and merely because the Collector had sent the time barred applications seeking references, it could not cloth the reference Court to assume jurisdiction either for the purpose of condonation of delay or for the purpose of deciding the applications seeking reference on merits. Whereas the reference Court has passed the orders in the applications seeking references wherein he could not assumed jurisdiction, by passing order with regard to the condonation of delay, we find that the impugned orders passed in these matters by the reference Court cannot be sustained in the eye of law and the same are hereby quashed and set aside.

5. However, learned Counsel Mr.Sheth for the claimants has submitted before us that this should not be the end of the matter. He has also placed reliance on the same decision in the case of Mohammed Hasnuddin v. State of Maharashtra, reported in AIR 1979 SC 404 (supra) and while citing this case, a pointed reference was made to para 33 of this judgment and he has submitted that appropriate observations be made by this Court also on the lines on which the Supreme Court made observations. Mr.Sheth has also invited our attention to para 11 of the order passed by the reference Court which reads as under:

> "11. On behalf of the opponents, learned District Government Pleader Shri P.L.Gandhi has argued that the claimants are not entitled for any more amount, for the reason that the Land Acquisition Officer has considered the facts and circumstances of the case and sale deed of the other land, therefore, the reference is required to be dismissed. It is also argued that even otherwise in view of the judgment of the Hon'ble Gujarat High Court in First Appeal No.1725 of 1994 to 1743 of 1994 decided on 6.2.95 at the most claimants are entitled for Rs.7/- per square meter."

It is a fact that the Land Acquisition Officer had awarded compensation at the rate of 90 ps. per sq.mtr. and the reference Court has enhanced the same to Rs.7/- per sq.mtr. Para 33 of the Supreme Court judgment in the case of Mohammed Hasnuddin (supra) is reproduced as under:

"33. It is impossible not to feel sorry for the appellant in this case, who was guilty of almost incredible folly by not filing an application for reference under S.14, sub-sec.(1) of the Hyderabad Land Acquisition Act, 1309 Fasli within the time prescribed therein, and is thus precluded from claiming what may be legitimately due to him by way of compensation. But, the decision must depend upon the construction of the section and the law must take its course. We trust that, as assured by its counsel the State Government of Maharashtra will be generous enough to consider whether it should make an ex gratia payment to the appellant of a sufficient amount by way of compensation which will be commensurate with the market value of the land acquired as on the 28th of February, 1958. It certainly was a piece of land of some value as it was situate in the city of Aurangabad."

6. In the facts and circumstances of the present cases when it was argued before the reference Court itself by the learned District Government Pleader that in view of the judgment of the Gujarat High Court in First Appeals Nos.1725 of 1994 to 1743 of 1994 decided on 6.2.1995, at least the claimants are entitled to Rs.7/sq.mtr. we trust and feel assured that the present appellant will consider to make an ex-gratia payment to the claimants in all these cases which would be sufficient to meet the requirements of reasonable compensation commensurate with the market value of the lands acquired in this case at the rate of Rs.7/- per sq.mtr. as was submitted before the reference Court by the District Govt. Pleader and we expect that even if these appeals have been allowed on the ground that the applications seeking reference were time barred, the appellant who is a functionary of a welfare State and a virtuous litigant would not deny and disown on otherwise honest and just claim of the claimants to the extent it was conceded by the District Govt. Pleader himself before the reference Court in this case.

7. With the observations as aforesaid, these 12 First Appeals are allowed. The impugned orders passed in each of these 12 matters are hereby set aside. There shall be no order as to costs.

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